



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Montana State Office
222 North 32nd Street

P.O. Box 36800
Billings, Montana 59107-6800

IN REPLY TO:

MTM 77633
SDR-922-97-08
3165 (922.PL)

AUG 01 1997

CERTIFIED - RETURN RECEIPT REQUESTED

DECISION

Ms. Linda Knickerbocker
J. Burns Brown Operating Company
P.O. Box 420
Havre, Montana 59501

SDR No. 922-97-08

)

ASSESSMENT AND INC AFFIRMED

J. Burns Brown Operating Company (JBBOC) requested a State Director Review (SDR) of a Notice of Incident of Noncompliance (INC) #AP-L-16-97A and assessment dated and issued on May 27, 1997, (Enclosure 1), to JBBOC by the Great Falls Resource Area Office (GFRA). The INC required JBBOC to reclaim the location and access road to the Federal 34-25-19 well located in the SE1/4SW1/4 Section 34, T. 25 N., R. 19 E., Blaine County, Montana. In addition, JBBOC was assessed \$250 for not completing the required surface reclamation within the specified timeframe. The SDR request was dated May 30, 1997, and filed with the Great Falls Resource Area Office (GFRA) on June 2, 1997, (Enclosure 2). This office received a copy of the SDR via telefax on June 13, 1997, from the GFRA. The assessment was issued to JBBOC under the authority of 43 CFR 3163.1(a)(2). The SDR request was considered timely filed on June 13, 1997, in accordance with 43 CFR 3165.3(b).

On June 13, 1997, JBBOC was contacted by this office regarding the SDR request. At that time, JBBOC informed the BLM that there was additional information in support of the SDR request that would be filed by JBBOC. On July 3, 1997 (Enclosure 3), the BLM informed JBBOC that the supporting documentation that would provide evidence regarding the SDR request, needed to be provided no later than July 23, 1997. On July 23, 1997, JBBOC telefaxed a letter dated July 22, 1997 (Enclosure 4), to this office providing JBBOC's additional information in support of the SDR request. The original letter was received in this office on July 28, 1997.

The JBBOC, in its July 22, 1997, letter, provides additional information in support of the SDR request and addresses two main points in their arguments regarding the INC and assessment: (1) JBBOC was acting in good faith and believed its representative in this matter was doing his best to resolve the problem, and (2) Upon becoming aware of the situation, JBBOC did act in good faith to rectify the matter at tremendous costs to the company.

Most of the delays associated with the actions regarding recontouring the well pad and access road, and seeding have been associated with conditions beyond both the operator and the BLM's control. The accessibility and timing associated with getting onto the location were severely impacted by the extreme wet weather conditions in this part of the Montana. The BLM was aware of these conditions, and rightfully, granted several extensions. The JBBOC also points out that its representative felt that the reclamation work was handled in the best manner under the circumstances. However, it was also noted

that JBBOC's representative may not have been fully aware of what was actually required to satisfy or comply with the BLM's reclamation requirements. This can be demonstrated by the meeting that was scheduled on the location with JBBOC, a local dirt contractor, and the Havre Resource Area (HRA) to discuss reclamation requirements. The JBBOC in their supporting information also point out the fact that it was apparent upon the visit to the wellsite in October 1996 that the surface reclamation had not been completed. The JBBOC stated that it was never their intention to leave the location in the condition discovered during the referenced visit. The JBBOC stated that while their field representative did represent the company, it was unaware of his failure to properly handle this problem. At the conclusion of the visit, the HRA verbally agreed that it was too late to get the location properly restored until the spring of 1997.

The records show that the Spring of 1997 again experienced very wet weather conditions. However, a field inspection conducted by the HRA prior to the May 15, 1997, deadline to complete surface reclamation work indicated access to the location was not weather-restricted, and conditions were ideal for reclamation. On May 16, 1997, a field inspection was again conducted which identified that JBBOC had not complied with the written order #AP-O-08-96 dated November 6, 1995 (Enclosure 5), and the May 15, 1997, deadline. The JBBOC has not provided this office with any evidence as to why JBBOC could not comply with the BLM deadline of May 15, 1997, specified in the April 21, 1997 letter (Enclosure 6). The BLM then issued INC #AP-L-16-97 dated May 16, 1997 (Enclosure 7), to JBBOC, requiring JBBOC to complete reclamation of the well pad by May 23, 1997. It also informed JBBOC that failure to timely respond to the INC may result in the assessment of \$250 in accordance with 43 CFR 3163.1(a)(2). The JBBOC received notice of the INC on May 19, 1997.

A field inspection was again conducted on May 27, 1997, which showed that JBBOC had not complied with the requirements under INC #AP-L-16-97, and the May 23, 1997, deadline. Therefore, the GFRA issued INC #AP-L-16-97A dated May 27, 1997 (Enclosure 1), and assessed \$250 for failure to comply with the requirements under INC #AP-L-16-97, and the May 23, 1997, deadline (Enclosure 6).

Our review of the record shows that if JBBOC had acted diligently during those periods that weather conditions were ideal for reclamation, and access to the location was not weather restricted; the GFRA would not have assessed JBBOC \$250 for failure to comply with the May 23, 1997, deadline. In addition, the records shows that the BLM had granted JBBOC numerous extensions and JBBOC had ample opportunities to begin surface reclamation on the location prior to the BLM deadlines.

Therefore, the INC for the violation of the regulations under 43 CFR 3162.5-1(a), and the \$250 assessment under 43 CFR 3163.1(a)(2) against JBBOC are upheld.

This Decision may be appealed to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR 4.400 and Form 1842-1 (Enclosure 8). If an appeal is taken, a Notice of Appeal must be filed in this office at the aforementioned address within 30 days from receipt of this Decision. A copy of the Notice of Appeal and of any statement of reasons, written arguments, or briefs must also be served on the Office of the Solicitor at the address shown on Form 1842-1. It is also requested that a copy of any statement of reasons, written arguments, or briefs be sent to this office. The appellant has the burden of showing that the Decision appealed from is in error.

If you wish to file a Petition for a Stay of this Decision, pursuant to 43 CFR 3165.4(c), the Petition must accompany your Notice of Appeal. A Petition for a Stay is required to show sufficient justification based on the standards

listed below. Copies of the Notice of Appeal and Petition for a Stay must also be submitted to each party named in this Decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a Decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

/s/ Thomas P. Lonnie

Thomas P. Lonnie
Deputy State Director
Division of Resources

8 Enclosures

- 1- INC #AP-L-16-97A dated May 27, 1997 (1 p)
- 2- JBBOC SDR Request dated May 30, 1997 (2 pp)
- 3- BLM letter dated July 3, 1997 (1 p)
- 4- JBBOC letter dated July 22, 1997 (3 pp)
- 5- BLM Written Order #AP-O-08-96 dated November 6, 1995 (2 pp)
- 6- BLM HRA letter dated April 21, 1997 (1 p)
- 7- INC #AP-L-16-97 dated May 16, 1997 (1 p)
- 8- Form 1842-1 (1 p)

cc: (w/o encls.)
WO-310, LS, Rm. 501
DM, Dickinson
DM, Lewistown
DM, Miles City
AM, Great Falls RA
AM, Havre RA
MT-922, Adjudication
AK SO
AR SO
CA SO
CO SO
ESO
ID SO
NV SO
NM SO
OR SO
UT SO
WY SO

922:PLaborda:rkd:7/29/97:x2862:SDR_JBBOC3.WPF